

THE WESTLANDS CO.

IBLA 84-172

Decided July 25, 1984

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting competitive oil and gas lease bid. M-59128 Acq.

Affirmed.

1. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases: Discretion to Lease

A BLM decision rejecting a high bid for a parcel of land in a competitive oil and gas lease sale as inadequate will be affirmed where appellant fails to overcome the Government's prima facie showing of the correctness of its estimated minimum acceptable fair market value for the parcel and to establish that appellant's bid reasonably reflects fair market value.

APPEARANCES: David L. Nevils and William E. Freeman, copartners, The Westlands Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

The Westlands Company has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated October 20, 1983, rejecting its competitive oil and gas lease bid, M-59128 Acq. Appellant was declared the high bidder, with a bid of \$412.40 (\$103.10 per acre), for parcel 2, a 4-acre parcel situated in sec. 1, T. 21 N., R. 58 E., Principal meridian, Richland County, Montana, within the Crane Field known geological structure (KGS), in a lease sale held September 21, 1983.

In its October 1983 decision, BLM rejected appellant's bid based on an "economic analysis" which concluded that the bid was less than a presale evaluation of parcel 2. In a memorandum recommending rejection of appellant's bid, attached to the decision, dated October 4, 1983, the Chief, Agreements and Evaluation Section, Branch of Fluid Minerals, BLM, stated:

There are successful Duperow and Red River oil wells in adjacent spacing units to the south and southwest of this parcel. The geological conditions that exist in the successful adjacent spacing units are expected to exist in Parcel No. 2.

A discounted cash flow analysis of Parcel No. 2 has yielded a tract value significantly higher than that submitted by the high bidder.

In its statement of reasons for appeal, appellant contends that the October 1983 BLM decision is "deficient" because it did not reveal the presale evaluation, or supporting factual data, with respect to parcel 2 and that its bid is "adequate." In support of the adequacy of its bid, appellant states that:

[C]urrent published structure maps (Peppard-Souders/Geomap and Petroleum Information's Williston Basin Field Summaries) indicate that the acreage included in Parcel No. 2 is located on the northeast flank of the Crane Field structural trap and may be sufficiently downdip to be below the field's oil/water contact, greatly increasing the risk factor for drilling within the spacing unit which includes Parcel No. 2.

Additionally, Ladd Petroleum drilled a very dry Red River test (#36-24 Ladd BM-State: SESW of Section 36, T 22 N, R 58 E) less than one mile to the north of Parcel No. 2.

The record includes a memorandum to the file, dated December 1, 1983, from the Chief, Agreements and Evaluation Section, Branch of Fluid Minerals, BLM, which responds to appellant's statement of reasons. BLM states that its presale evaluation of parcel 2 was \$8,800 (\$2,200 per acre) "derived from a present worth discounted cash flow analysis," with a risk factor of from 50 to 75 percent and assuming production from the Duperow and Red River formations. ^{1/} BLM also indicates that it prepared a structural contours map of the Crane Field, including parcel 2, based on the map included in the Petroleum Information Williston Basin Field Summary, cited by appellant, which was prepared in 1979 and was based on two wells, and three additional wells drilled since that time. BLM states that it "included the structur[al] data from well no. 36-24 Ladd BN-State" in its analysis. The resulting map, BLM argues, indicates that parcel 2 is "slightly updip of producing oil well no. 11x-12 USA, not downdip as stated by the appellant," thereby increasing the "probability for a petroleum discovery." BLM points out that parcel 2 is located 400 feet north from the "producing Red River oil well" (well 11x-12 USA) and states that this well has "more significance" concerning the value of parcel 2 than the dry hole well (well 36-24 Ladd BN-State) located 1 mile north of parcel 2.

Following the Board's receipt of the December 1, 1983, memorandum a copy of same was served on appellant and appellant was given 30 days from the date of receipt in which to respond to the statements contained therein. No response was submitted by appellant.

[1] The Secretary of the Interior has discretionary authority to reject a high bid for a competitive oil and gas lease as inadequate.

^{1/} BLM also stated that:

"The appellant is concerned about the presence of hydrocarbons in the Red River Formation in the tract area. As a matter of interest we re-ran the analysis for Parcel No. 2 using only the estimated reserves for the Duperow Formation and a higher risk factor range (60 to 80 percent risk). This analysis yielded a tract value of \$3440. (\$860/acre). Even this reduced value still is several times higher than the bid submitted by the appellant."

30 U.S.C. § 226(b) (1982); 43 CFR 3120.5. This Board has consistently upheld that authority so long as there is a rational basis for the conclusion that the highest bid does not represent the fair market value for the parcel. Larry White, 81 IBLA 19 (1984), and cases cited therein.

Appellant contends in its statement of reasons that BLM failed to adequately document the basis for its determination that appellant's bid did not represent the fair market value of parcel 2 or even to disclose the presale evaluation. If the record had been maintained as it was prior to appellant's appeal, we would have found appellant's allegation to be meritorious and remanded the case to BLM for readjudication of appellant's bid. Prior to its submittal of the December 1, 1983, memorandum BLM had not made a prima facie showing of the correctness of its presale evaluation and appellant's bid was not clearly spurious or unreasonable. See R. T. Nakaoka, 81 IBLA 197 (1984). However, BLM made a sufficient showing, based on the proximity of producing wells and its presale evaluation of the value of the parcel, that its estimate of that value was prima facie correct. 2/ Appellant must demonstrate not only that its bid did represent fair market value but also that the Government's estimate of fair market value was inaccurate. See Viking Resources Corp., 80 IBLA 245 (1984).

Appellant alleges that the productivity of parcel 2 is called into question because the parcel may be downdip of the oil/water contact point for the Crane Field and because of the proximity of a dry well. However, appellant has provided no evidence to dispute BLM's updated structural contours map which indicates that the parcel is not downdip of the oil/water contact point, or to dispute the closer proximity of a producing well (well 11 X 12 USA) and the presence of other producing wells in the area. Moreover, appellant has presented no evidence that its bid of \$103.10 per acre represents the fair market value of parcel 2. Accordingly, we conclude that BLM properly rejected appellant's bid for competitive oil and gas lease M-59128 Acq.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Bruce R. Harris Edward W. Stuebing
Administrative Judge Administrative Judge.

2/ BLM stated that, while the factual data used in developing its presale minimum bids is commercially available, the bids themselves "remain proprietary to prevent harm to ongoing Bureau programs." The fallacy in this argument was discussed in Viking Resources Corp., 77 IBLA 57 (1982) (Burski, A. J. concurring). Needless to say, we have long regarded disclosure of the presale evaluation as essential to the Board's role in reviewing a BLM decision rejecting a high bid in a competitive oil and gas lease sale as inadequate. See R. T. Nakaoka, *supra*; Mesa Petroleum Co., 81 IBLA 194 (1984), and cases cited therein.

